



REDUCE PREMIUMS BY CODIFYING ASSOCIATION HEALTH PLANS

As U.S. healthcare spending continues to outpace inflation over time, Congress should codify association health plans (AHPs) as an effective mechanism to provide quality health insurance at a lower cost to consumers.

BACKGROUND

AHPs have been around for decades¹ and generally refer to “a wide spectrum of arrangements that provide health coverage through different types of organizations, including but not limited to trade associations, professional societies, and chambers of commerce.”² Presently, there is no singular definition of AHPs used by all federal regulatory agencies.³ AHPs permit individuals or employers to shop for coverage as a larger group in an effort to obtain more favorable coverage and pricing from insurers.

The Department of Labor (DOL) regulates AHPs as multiple employer welfare agreements (MEWA) that amount to two or more employers providing benefits to their employees. The majority of AHPs have historically provided individual or small group coverage.⁴ In most cases, DOL has concluded that the association is not an employer for regulatory purposes.⁵

On June 18, 2018,⁶ DOL finalized a rule increasing access to AHPs by expanding the ability of small businesses and self-employed workers to associate by geography or industry and be treated as a single large employer.⁷ Under the rule, “AHPs may not charge higher premiums or deny coverage as a result of pre-existing conditions, or cancel coverage because an employee becomes ill.”⁸ AHPs, “like any other group health plan, cannot discriminate in eligibility, benefits, or premiums against an individual within a group of similarly situated individuals based on a health factor.”⁹

Following the rule, the Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) estimated that nearly 5 million people would enroll in AHPs in 2022.¹⁰ Additionally, the CBO report estimated that roughly 400,000 people, who would otherwise be uninsured, would receive AHP coverage over the 2019 to 2028 period.¹¹ Most importantly, “CBO and JCT estimate[d] that premiums for AHPs sold under the new rules will be, on average, roughly 30 percent lower than premiums for fully regulated small- group coverage.”¹²

In March 2019, a federal judge in the District of Columbia struck down the final rule after determining that the DOL’s interpretation of “employer” was unreasonable and exceeded the statutory authority delegated by Congress through the Employee Retirement Income Security Act (ERISA).¹³ Following the Department of Justice’s appeal in April 2019, the DOL announced that it would not pursue enforcement actions against employers who relied in good faith on the AHP rule’s validity.¹⁴

POLICY SOLUTIONS

Congress should amend ERISA to provide smaller employers and self-employed individuals access to large-group coverage by permitting AHPs to function as “employers.”¹⁵ Legislation should include nondiscrimination provisions which prohibit an AHP from basing membership, eligibility for health benefits, and premiums on health factors.

Congress should also exempt AHPs from certain state insurance requirements when association members reside in different states. Enacting H.R. 4547, the Association Health Plans Act of 2021, would accomplish many of these objectives.

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¹ U.S. Gov't Accountability Off., HEHS-96-59R, *Employer Association Health Plans* (1995), <https://www.gao.gov/assets/90/85191.pdf>.

² Bernadette Fernandez, Cong. Research Serv., R45216, *Background Information on Health Coverage Options Addressed in Executive Order 13813* (Jun. 2018), <https://fas.org/sgp/crs/misc/R45216.pdf>.

³ *Id.*

⁴ See Centers for Medicare & Medicaid Services, *Application of Individual and Group Market Requirements Under Title XXVII of the Public Health Service Act when Insurance Coverage Is Sold to, or Through, Associations* 3 (September 2011), https://www.cms.gov/CCIIO/Resources/Files/Downloads/association_coverage_9_1_2011.pdf.

⁵ Fernandez, *supra*, note 2.

⁶ 29 C.F.R. § 2510.3-5 (2018).

⁷ U.S. Dep't of Labor, *About Association Health Plans*, <https://www.dol.gov/general/topic/association-health-plans>, (last visited Jun. 17, 2019).

⁸ *Id.*

⁹ 29 C.F.R. § 2510.3-5 (2018).

¹⁰ Congressional Budget Office, *How CBO and JCT Analyzed Coverage Effects of New Rules for Association Health Plans and Short-Term Plans* (January 2019), https://www.cbo.gov/system/files/2019-01/54915-New_Rules_for_AHPs_STPs.pdf

¹¹ *Id.*

¹² *Id.* at 5.

¹³ *California v. U.S. Dep't of Labor*, 2018 D.C. Cir. 18-1747.

¹⁴ *Id.*

¹⁵ Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, (1974).